

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

WENDY SNELL, PARENT and
GUARDIAN of S.Y. and S.Y., a minor,

Plaintiffs,

v.

NORTH THURSTON SCHOOL DISTRICT,
A WASHINGTON MUNICIPAL
CORPORATION,

Defendant.

No. 3:13-cv-5488RBL

DECLARATION OF SUSAN
MINDENBERGS IN SUPPORT
OF MOTION FOR FEES AND
COSTS

SUSAN B. MINDENBERGS does hereby declare and certify under penalty of perjury under the laws of the State of Washington that the following is true and correct and from my personal knowledge.

1. I am an attorney licensed to practice law in the State of Washington, the State of Alaska, U.S. District Court, Eastern and Western Districts, the U.S. Court of Appeals for the Ninth Circuit, and the Quinault Nation and Hoh Nation Tribal Courts.

Declaration of Susan B. Mindenbergs
In Support of Motion for Fees and Costs - Page 1
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3 2. I represent Wendy Snell and her daughter S.Y. in the above-entitled action. Ms.
4 Snell and I entered into a written Contingent Fee Agreement for my representation of her and her
5 daughter in this matter.
6

7 3. Pursuant to the IDEA, 20 U.S.C. § 1415(i)(3)(B), as the attorney for the
8 prevailing party, this is my declaration as to the reasonable attorney fees and costs incurred in
9 this litigation.

10 4. I have been practicing law in Washington since July 1991. My practice consists
11 primarily of employment discrimination cases. Some of the larger defendants I have litigated
12 against include the State of Washington, King County, the University of Washington, the
13 Federal Aviation Administration, the Internal Revenue Services, Seattle School District, the City
14 of Redmond, Absher Construction, Target Corporation, Wal-Mart Corporation, The Boeing
15 Company, Alcoa-Intalco Aluminum, The Shaw Group, Georgia-Pacific, Kentucky Fried
16 Chicken, Safeway, Lilly Industries, The Better Business Bureau, Haworth, Inc., Idearc (formerly
17 Verizon), and Antioch University. I have successfully litigated cases against all of these
18 defendants, either by settlement or trial. I also spend approximately one hundred hours each
19 year providing *pro bono* legal services to indigent persons.
20

21 5. Affiliations and Committee Memberships: I am a member of the Washington
22 State Bar Association Judicial Recommendations Committee. My term is from 2011 to 2016.
23 Between 1997 and 2000, I served on the WSBA Rules and Procedures Committee for three
24 years; I chaired the Rules Committee in my third year of service on the Committee. For
25
26

1
2 approximately ten years between 1999 and 2009, I served on the Board of Directors of the
3 Washington Employment Lawyers Association (WELA). I have been a cooperating attorney for
4 the American Civil Liberties Union of Washington (ACLU) for several years.

5
6 6. In 2002, I received intensive trial training from the Spence Trial Lawyers College
7 (TLC) in Dubois, Wyoming. From 2003 until 2008 when I retired from TLC, I was a faculty
8 member teaching trial skills to lawyers from around the United States. I served on the National
9 Institute of Trial Lawyers faculty for three years. I have been a featured speaker at many legal
10 education seminars for groups such as WELA and the Washington State Association for Justice.
11 I am currently a featured speaker at the National Business Institute CLE scheduled for June
12 2014.

13
14 7. I have served as *amicus curiae* on several civil rights cases for the ACLU and for
15 WELA at various appellate court levels in Washington.

16
17 8. My educational background includes a Bachelor of Arts degree that I received in
18 1972 from the University of Oregon. In 1974, I received a Masters of Regional and Urban
19 Planning degree from the University of Oregon. I graduated from the University of Puget Sound
20 Law School (now Seattle University Law School) in August 1990. In my third year of law
21 school, I received the American Jurisprudence Award for Trial Clinic.

22
23 9. I have considerable experience with educational issues. I spent approximately 13
24 years working as an administrator two public school districts. Between 1974 and 1978, I was an
25 administrator for the Eugene School District in Eugene, Oregon. In that capacity, I supervised
26 the preparation of the implementation of Public Law 94-142 for the Eugene School District—the

1
2 federal law that required that students with disabilities be educated in the least restrictive
3 environment. Between 1978 and 1989, I served in a variety of administrative capacities for
4 Seattle Public Schools. As an attorney, I have litigated against school districts on several
5 occasions; both on behalf of students and on behalf of employees.
6

7 10. I am a sole practitioner and have been since 1991. As this case progressed to
8 hearing, I spent approximately 95% of my work time on the matters in this case. The time I
9 spent working on this litigation necessarily precluded me from working on other fee generating
10 legal matters. I declined to work on other cases while preparing for the hearing in this matter
11 because of time constraints.

12 11. The issues in this case were moderately complex due to the complicating medical
13 conditions of S.Y.
14

15 12. All of the issues that Ms. Snell and S.Y. brought to the Due Process Hearing and
16 the appeal of this matter involve a common core of facts.

17 13. After I received the ALJ's Order and Findings of Fact and Conclusions of Law in
18 this matter dated May 4, 2013, I contacted several lawyers who hold themselves out as education
19 lawyers. My intent was to discuss my fee petition with them. None of the lawyers with whom I
20 spoke take IDEA cases on a contingency basis any longer because of the complexities involved
21 in obtaining fees as the prevailing party.
22

23 14. I keep a contemporaneous accounting of all my time and activities for all my
24 cases. I have kept the same type of accounting for all the work I performed for this litigation.
25 Attached hereto as Exhibit A are my contemporaneously logged hours spent litigating this case.
26

1
2 I logged a total of 443.36 hours on the underlying case and the appeal.

3 15. Many of the hours I devoted to this case are not reflected on the contemporaneous
4 accounting records. Before submitting my contemporaneous log to Mr. Needle for his review, I
5 deducted several hours from my fee request to eliminate some blocks of time.
6

7 16. My usual and customary fee is \$375.00 per hour. My hourly rate is reasonable given
8 the number of years I have been practicing and the scope of my practice and experience in the
9 legal community.

10 17. Attached hereto is the declaration prepared by Jeffrey L. Needle, J.D., who attests
11 to the reasonableness of my hourly rate and the time I devoted to this matter. The legal fees I
12 incurred for Mr. Needle's expert opinion total \$1,806.25.
13

14 18. My paralegal, Irene Calvo, has worked for me for more than three years. Ms. Calvo
15 is a graduate of Stanford University. She has worked as a paralegal since 2004 in large corporate
16 law firms and for smaller firms such as mine. The billable rate for Ms. Calvo's time is \$125.00
17 an hour. The time spent by Ms. Calvo on this case reduced the amount of attorney time I would
18 have otherwise have had to spend on the case. The total number of hours Ms. Calvo spent on the
19 case is 127.40.

20 19. The modest costs incurred in this case are reasonable. The costs consist of service
21 of process costs and filing fee for the complaint in this matter. The expert witness who appeared
22 at the Due Process Hearing on behalf of S.Y. did not charge for her time.
23

24 /

25 /

26
Declaration of Susan B. Mindenbergs
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20. A summary of the legal fees in this case include the following:

- | | | |
|----|---|--------------|
| a. | Mindenbergs' fees for hearing and appeal: | \$166,260.00 |
| b. | Paralegal costs: | \$ 15,925.00 |
| c. | Costs incurred in the case: | \$ 841.95 |
| d. | Needle's fees for expert testimony: | \$ 1,806.25 |

TOTAL FEES/COSTS	\$184,833.20
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Dated this 16th day of April 2014, at Seattle, Washington.



Susan B. Mindenbergs

SUSAN B. MINDENBERGS

ATTORNEY AT LAW
 260 MAYNARD BUILDING
 119 FIRST AVENUE SOUTH
 SEATTLE, WA 98104-2564

(206) 447-1560

Wendy Snell
 550 Golson Road SE
 Olympia, WA 98513

Total activity and costs:		<u>Hours</u>	<u>Rate</u>	
2/24/2012	Due process request			\$ No Charge
2/27/2012	Finalize due process hearing request and review client binders			No Charge
2/28/2012	Review client documentation; consult w/client's former attorney	1.77	375.00	663.75
3/28/2012	Travel to Lacey to attend resolution meeting; meet with client to prepare for mneeting; attend meeting	3.30	375.00	1,237.50
8/27/2012	Prepare documents for hearing	4.30	375.00	1,612.50
9/11/2012	Prepare documents for due process hearing	2.10	375.00	787.50
9/12/2012	Prepare documents for due process hearing	4.30	375.00	1,612.50
9/14/2012	Prepare documents for due process hearing	1.50	375.00	562.50
9/24/2012	Prepare exhibits & identify which witness to testify for each exhibit	5.70	375.00	2,137.50
9/24/2012	Prepare witness list-review exhibits for witnesses	2.10	375.00	787.50
9/24/2012	Prepare direct exam for parent witnesses	2.10	375.00	787.50
9/25/2012	Prepare direct exam for parent witnesses	4.50	375.00	1,687.50
9/26/2012	Prepare cross examination for deGive and principal	5.30	375.00	1,987.50
9/26/2012	Meet w/tutor to discuss how tutoring assists student	1.53	375.00	573.75

EXHIBIT A

		<u>Hours</u>	<u>Rate</u>	
9/26/2012	Meet w/parents to prepare for hearing	4.50	375.00	1,687.50
9/27/2012	Prepare for hearing-draft and revise opening statement	4.20	375.00	1,575.00
9/27/2012	Draft direct examination questions for Wendy Snell	2.10	375.00	787.50
9/27/2012	Research remedies available under the IDEA	1.50	375.00	562.50
9/28/2012	Prepare for hearing-draft and revise opening statement	2.10	375.00	787.50
9/28/2012	Draft direct examination questions for Wendy Snell	3.30	375.00	1,237.50
9/28/2012	Draft direct examination questions for Rose Snell	2.10	375.00	787.50
9/28/2012	Draft direct examination questions for Kevin Young	1.40	375.00	525.00
9/29/2012	Prepare for hearing-cross examination questions for Heegeman	3.50	375.00	1,312.50
9/29/2012	Prepare for hearing-cross examination questions for deGive, principal, and classroom teacher	3.90	375.00	1,462.50
9/30/2012	Prepare for hearing-direct examination questions for Patsy Williams	1.50	375.00	562.50
9/30/2012	Prepare for hearing-identify exhibits to be used by & draft questions for each exhibit	7.30	375.00	2,737.50
10/1/2012	Attend hearing			No charge
10/1/2012	Prepare for hearing-meeting w/client			No charge
10/1/2012	Prepare amended Due Process Request	2.50	375.00	937.50
10/2/2012	Prepare amended Due Process Request	4.10	375.00	1,537.50
10/16/2012	Pre-hearing conference; prepare, conduct	1.50	375.00	562.50
10/18/2012	Research retaliation issue	2.50	375.00	937.50
10/22/2012	Research retaliation claim	2.60	375.00	975.00
10/26/2012	Prepare for hearing-direct exam of parent's witnesses-meet with clients to review direct examination questions	4.30	375.00	1,612.50

		<u>Hours</u>	<u>Rate</u>	
10/31/2012	Prepare exhibits for hearing	2.10	375.00	787.50
11/1/2012	Consult w/expert and draft expert questions	2.00	375.00	750.00
11/2/2012	Prepare direct exam for Rose Snell and Kevin Young	4.30	375.00	1,612.50
11/2/2012	Prepare direct examination for Wendy Snell	2.23	375.00	836.25
11/4/2012	Prepare cross exam for deGive	5.80	375.00	2,175.00
11/4/2012	Prepare direct examination for Wendy Snell	3.50	375.00	1,312.50
11/5/2012	Prepare for opening statement and objection to denial of motion to amend	2.10	375.00	787.50
11/5/2012	Hearing	6.50	375.00	2,437.50
11/5/2012	Prepare witnesses for direct and cross examination	1.50	375.00	562.50
11/5/2012	Travel to Lacey and return	3.00	375.00	1,125.00
11/12/2012	Prepare for deGive testimony	2.10	375.00	787.50
11/13/2012	Prepare for hearing-review notes of hearing to ensure all areas of controversy addressed	3.20	375.00	1,200.00
11/14/2012	Prepare for hearing-review notes of hearing to ensure all areas of controversy addressed	4.20	375.00	1,575.00
11/14/2012	Hearing	7.30	375.00	2,737.50
11/15/2012	Prepare for hearing/meet with client	2.50	375.00	937.50
11/15/2012	Hearing	6.50	375.00	2,437.50
11/24/2012	Prepare for cross examination of principal and deGive	2.10	375.00	787.50
11/25/2012	Prepare for cross examination of principal and deGive	4.30	375.00	1,612.50
11/26/2012	Prepare for hearing	3.10	375.00	1,162.50
11/26/2012	Hearing	6.00	375.00	2,250.00
12/16/2012	Prepare for cross examination of District witnesses-deGive, Shepard, Heegeman, Peterson	5.10	375.00	1,912.50

		<u>Hours</u>	<u>Rate</u>	
12/17/2012	Prepare for and attend Due Process Hearing	7.50	375.00	2,812.50
1/28/2013	Prepare for hearing-review all hearing notes to ensure all areas of controversy addressed; revise cross exam questions	4.10	375.00	1,537.50
1/29/2013	Prepare for and conduct hearing	8.10	375.00	3,037.50
2/11/2013	Prepare closing argument-review & digest record	2.10	375.00	787.50
2/12/2013	Prepare closing argument-review & digest record	3.10	375.00	1,162.50
2/13/2013	Prepare closing argument-review & digest record	4.50	375.00	1,687.50
3/4/2013	Prepare closing argument-review & digest record	3.10	375.00	1,162.50
3/6/2013	Prepare closing argument-review & digest record	2.50	375.00	937.50
3/20/2013	Prepare closing argument-review & digest record	1.00	375.00	375.00
3/21/2013	Prepare closing argument-review & digest record	4.30	375.00	1,612.50
3/22/2013	Prepare closing argument-review & digest record	6.30	375.00	2,362.50
3/26/2013	Prepare closing argument-review & digest record	3.00	375.00	1,125.00
3/28/2013	Prepare closing argument-review & digest record	4.10	375.00	1,537.50
3/29/2013	Prepare closing argument-review & digest record	4.20	375.00	1,575.00
3/31/2013	Prepare closing argument-review & digest record	4.50	375.00	1,687.50
4/1/2013	Research substantive and procedural violations of the IDEA; write closing argument	3.50	375.00	1,312.50
4/1/2013	Write closing argument-final draft	3.00	375.00	1,125.00
4/2/2013	Research substantive and procedural violations of the IDEA; write closing argument-final draft	2.10	375.00	787.50
4/2/2013	Read 82 plaintiff exhibits and 19 district exhibits for citation to the record	4.50	375.00	1,687.50
4/3/2013	Digest 1150 pages of transcripts for citations to record	6.50	375.00	2,437.50
4/4/2013	Write closing argument-final draft	3.50	375.00	1,312.50

		Hours	Rate	
5/6/2013	Review decision; consult w/client about findings	2.10	375.00	787.50
5/15/2013	Research motion for fee petition and begin drafting petition	3.20	375.00	1,200.00
5/17/2013	Research motion for fee petition and begin drafting petition	1.00	375.00	375.00
6/3/2013	Research complaint for fees; prevailing party	4.60	375.00	1,725.00
6/3/2013	Prepare complaint for attorney fees and costs	2.60	375.00	975.00
6/4/2013	Prepare complaint for attorney fees and costs	4.30	375.00	1,612.50
7/8/2013	Research summary judgment to recover fees	2.30	375.00	862.50
7/9/2013	Prepare declaration for expert witness	2.50	375.00	937.50
8/7/2013	Research CR 12 (b)(6) motion	3.10	375.00	1,162.50
8/9/2013	Research counterclaim; answer counterclaim	4.20	375.00	1,575.00
8/9/2013	Meet w/parents to discuss causes of action	1.50	375.00	562.50
8/14/2013	Prepare amended complaint	2.10	375.00	787.50
11/30/2013	Prepare brief for complaint for damages; research Iodestar, IDEA costs and fees, issues pertaining to credibility - case 1	4.30	375.00	1,612.50
12/1/2013	Prepare brief for complaint for damages; research Iodestar, IDEA costs and fees, issues pertaining to credibility - case 1	5.40	375.00	2,025.00
12/2/2013	Prepare brief and research appellate basis	4.50	375.00	1,687.50
12/3/2013	Prepare brief and research appellate basis	4.20	375.00	1,575.00
12/4/2013	Prepare brief and research appellate basis	2.50	375.00	937.50
12/6/2013	Prepare brief and research appellate basis	4.30	375.00	1,612.50
12/8/2013	Prepare brief and research appellate basis	5.30	375.00	1,987.50
12/10/2013	Finalize brief for fees and costs; with facts of case	4.20	375.00	1,575.00
12/12/2013	Finalize legal argument for Snell #1 brief	2.50	375.00	937.50

		<u>Hours</u>	<u>Rate</u>	
12/13/2013	Finalize legal argument for Snell #1 brief	1.53	375.00	573.75
12/16/2013	Finalize opening brief	3.10	375.00	1,162.50
12/18/2013	Finalize opening brief	4.50	375.00	1,687.50
12/19/2013	Finalize opening brief	5.20	375.00	1,950.00
1/22/2014	Prepare responsive brief; research appellate issues; draft outline	6.30	375.00	2,362.50
1/23/2014	Prepare responsive brief; research appellate issues; draft outline	3.50	375.00	1,312.50
1/24/2014	Research appellate issues--due weight, deference, IEP violations, finalize response	7.30	375.00	2,737.50
1/25/2014	Research appellate issues--due weight, deference, IEP violations, finalize response	3.50	375.00	1,312.50
1/26/2014	Research appellate issues--due weight, deference, IEP violations, finalize response	6.20	375.00	2,325.00
1/27/2014	Finalize responsive brief; check all cites to record and legal citations	4.30	375.00	1,612.50
1/28/2014	Finalize responsive brief; check all cites to record and legal citations	5.20	375.00	1,950.00
1/29/2014	Finalize responsive brief; check all cites to record and legal citations	2.50	375.00	937.50
1/30/2014	Review response from NTSD	1.50	375.00	562.50
1/31/2014	Review responsive brief	1.00	375.00	375.00
3/18/2014	Prepare for oral argument in Snell #1	1.50	375.00	562.50
3/19/2014	Prepare for oral argument in Snell appeal	4.50	375.00	1,687.50
3/21/2014	Prepare for oral argument in Snell appeal	3.50	375.00	1,312.50
3/24/2014	Research all cases cited by parties in preparation of oral argument	4.50	375.00	1,687.50
3/25/2014	Research all cases cited by parties in preparation of oral argument	3.50	375.00	1,312.50

		<u>Hours</u>	<u>Rate</u>	
3/26/2014	Research all cases cited by parties in preparation of oral argument	3.20	375.00	1,200.00
3/27/2014	Research all cases cited by parties in preparation of oral argument	3.20	375.00	1,200.00
3/28/2014	Research all cases cited by parties in preparation of oral argument	5.10	375.00	1,912.50
3/29/2014	Research all cases cited by parties in preparation of oral argument	1.60	375.00	600.00
3/30/2014	Research all cases cited by parties in preparation of oral argument	2.50	375.00	937.50
3/31/2014	Research compensatory education and draft oral argument response	4.30	375.00	1,612.50
3/31/2014	Draft oral argument after digesting all relevant precedent	2.10	375.00	787.50
4/1/2014	Research meaningful progress in the context of educational benefit and prepare oral argument	6.30	375.00	2,362.50
4/2/2014	Research compensatory education and draft oral argument response	2.10	375.00	787.50
4/2/2014	Draft oral argument after digesting all relevant precedent	5.30	375.00	1,987.50
4/2/2014	Finalize oral argument on prevailing party and fees on fees	3.50	375.00	1,312.50
4/3/2014	Meet w/client and present oral argument	2.00	375.00	<u>750.00</u>
Total legal fees				\$ 166,260.00

Paralegal fees:

3/1/2012	Ck to Janet Francisco	2.00	125.00	250.00
4/2/2012	Ck to Irene Calvo	5.90	125.00	737.50
7/5/2012	Ck to Irene Calvo	3.20	125.00	400.00
9/5/2012	Ck to Irene Calvo	19.00	125.00	2,375.00
10/2/2012	Ck to Irene Calvo	37.20	125.00	4,650.00

		<u>Hours</u>	<u>Rate</u>	
11/2/2012	Ck to Irene Calvo	18.50	125.00	2,312.50
12/3/2012	Ck to Irene Calvo	1.80	125.00	225.00
1/2/2013	Ck to Irene Calvo	0.10	125.00	12.50
2/1/2013	Ck to Irene Calvo	0.60	125.00	75.00
3/1/2013	Ck to Irene Calvo	0.60	125.00	75.00
4/2/2013	Ck to Irene Calvo	0.50	125.00	62.50
5/1/2013	Ck to Irene Calvo	9.10	125.00	1,137.50
6/4/2013	Ck to Irene Calvo	1.50	125.00	187.50
7/1/2013	Ck to Irene Calvo	7.90	125.00	987.50
8/1/2013	Ck to Irene Calvo	1.40	125.00	175.00
11/4/2013	Ck to Irene Calvo	0.60	125.00	75.00
12/2/2013	Ck to Irene Calvo	0.30	125.00	37.50
1/2/2014	Ck to Irene Calvo	9.00	125.00	1,125.00
2/3/2014	Ck to Irene Calvo	8.20	125.00	<u>1,025.00</u>

Total paralegal fees \$ 15,925.00

Costs:

4/16/2012	Ck to ABC Legal Messengers	30.00
10/18/2012	Ck to ABC Legal Messengers	44.00
11/16/2012	Ck to ABC Legal Messengers	213.45
5/23/2013	Ck to ABC Legal Messengers	20.00
7/8/2013	Ck to ABC Legal Messengers	74.50
7/26/2013	VISA charge - complaint fees	400.00
2/20/2014	Ck to ABC Legal Messengers	<u>60.00</u>

Total costs \$ 841.95

Total amount due \$ 183,026.95